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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of: **CHARI**

Application No: **09/671,995**

Group Art Unit: **1642**

Filed: **September 29, 2000**

Examiner: **Karen A. Canella, Ph.D.**

For: **Composition and Methods for Treating Cancer Using Immunoconjugates and Chemotherapeutic Agents**

Attorney Docket No: **104322.198 US1**

Commissioner of Patents
PO Box 1450
Alexandria, VA 22313-1450

RESPONSE AND AMENDMENT UNDER 37 C.F.R. § 1.116

This Response is submitted in reply to the Office Action mailed August 13, 2004, for which a response is due on or before November 13, 2004.

No fees are believed to be due; however, the Commissioner is authorized to charge any necessary fees or credit any overpayments to Deposit Account No. 08-0219.

Amendments to the Claims are reflected in the listing of claims beginning at page 2.

Remarks begin on page 12.

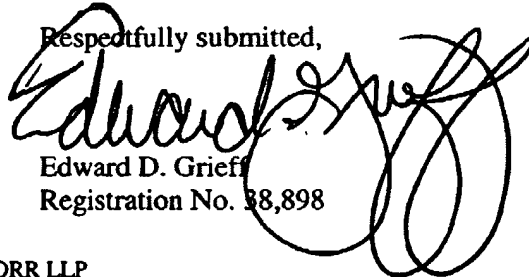
The Examiner has applied *per se* assumptions to determine that the claims are obvious. The Examiner should note that the use of *per se* rules by Office personnel is improper for determining whether claimed subject matter would have been obvious under 35 USC § 103. See, e.g., *In re Brouwer*, 37 USPQ2d 1663, 1666 (Fed. Cir. 1996). The Examiner is also reminded that a determination of patentability under 35 USC § 103 should be made upon the facts of the particular case in view of the totality of the circumstances. See, e.g., *In re Dillon*, 16 USPQ2d 1897, 1901 (Fed. Cir. 1990)(en banc), cert. denied, 500 US 904 (1991).

In view of the above, Applicant respectfully requests that this obviousness rejection be withdrawn.

VII. Conclusion

Applicant respectfully requests an early and favorable reconsideration and allowance of pending claims 105-120 and 144-163. The Examiner is encouraged to telephone the undersigned to expedite prosecution of this application.

Respectfully submitted,



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Date: November 15, 2004
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